(1)

93-27

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JOGANANDA HAZRA - PETITIONER

vs.

NATIONAL RX SERVICES, INC. - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOGANANDA HAZRA
PETITIONER, PRO SE
827 SOUTH JAMES ROAD
APARTMENT 7
COLUMBUS, OHIO 43227
PHONE: (614) 237-7336

QUESTIONS PRESENTED

1. Did the appeals' court abuse its discretion in considering petitioner's pro se appeal on Rule 60(b)(3) and (b)(6) motion to vacate the summary judgment because the motion was supported with an affidavit which provided evidence of fraud by attorneys and proof of fraud about facts by judges and in the Pro Se Appellant's Brief showing conspiracy to violate appellant's Constitutional Rights to equal protection and equal privileges under the law because of petitioner's race and national origin ?

2. Did the appeals' court abuse its discretion in imposing sanction against the petitioner because the imposition of sanction by the district court was an abuse of discretion of the F.R.C.P. Rule 11 violation determination according to the standard of review set forth by this Court in 1990 since in an earlier case this Court ruled that the district court may entertain a Rule 60(b) motion without leave by the appellate court and the petitioner in support of the Rule 60(b)(3) and (b)(6) motion in an affidavit provided evidence of fraud by attorneys and proof of fraud about facts by judges ?

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

REASON FOR GRANTING THE PETITION 14

CONCLUSION 27

INDEX TO APPENDICES

Appendix A ..... Order of the Court of Appeals about Rule 60(b) motion Filed January 25, 1993

Appendix B ..... Court of Appeals Denial of the Petition for Rehearing on Rule 60(b) motion Filed February 23, 1993

Appendix C ..... Order of the District Court for the Southern District of Ohio about Rule 60(b) motion Filed June 30, 1992

Appendix D ..... Court of Appeals Denial of the Petition for Rehearing on Rule 59(e) motion Filed November 26, 1991

TABLE OF AUTHORITIES CITED

Page

CASES

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242, 106 S.Ct. 2505 (1986) 8, 18, 19

Celotex Corp. v. Catrett,
477 U.S. 317, 106 S.Ct. 2548 (1986) 8, 10, 19

Cooter & Gell v. Hartmarx Corp.,
496 U.S. 384, 110 S.Ct. 2447 (1990) 25

Hazel-Atlas Glass Co. v. Hartford-Empire Co.,
332 U.S. 238, 64 S.Ct. 997 (1944) 24, 26

Mastini v. American Tel. & Tel. Co.,
369 F.2d 378 (2d Cir. 1966), cert denied,
387 U.S. 933 (1967) 22

Price Waterhouse v. Hopkins,
490 U.S. 228, 109 S.Ct. 1775 (1989) 9, 18, 20, 21, 23

Standard Oil Co. of California v. United States,
429 U.S. 17, 97 S.Ct. 31 (1976) 12, 23, 25

STATUTES

United States Code
Title 28, Rule 11 ..... 13, 14, 25, 26
Title 28, Rule 15(a)(c) 26
Title 28, Rule 56 ..... 8, 10, 19
Title 28, Rule 59(e) 12, 14-16, 24
Title 28, Rule 60(b) 1, 12-16, 19, 21-26

Title 28, Section 1254(1) 1
Title 29, Section 621 et seq. 1-3, 9, 14, 24, 25, 27
Title 42, Section 2000 e - 5(f)(1) 1-3, 9, 14, 24, 25, 27

United States Constitution
Title 42, Section 1985(3) 1, 2, 14, 24, 25, 27
Title 42, Section 1986 ..... 1, 2, 14, 24, 25, 27

OTHERS

Restatement of the Law 2d Torts,
Chapter 1 Section 8A comment b, 15 (1965) 17

Wright & Miller, Federal Practice & Procedure:
Civil Section 2873, Pocket Part (1992) 12, 23, 25

Wright & Miller, Federal Practice & Procedure:
Civil Section 2875 (1973) 21

Petitioner, Jogananda Hazra, respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Sixth Circuit affirming the district court's abuse of discretion in considering petitioner's Rule 60(b)(3) and (b)(6) motion to vacate the summary judgment obtained by respondent's counsel and its Labor and Associate Counsel by perpetrating fraud, that is, attorneys fraud and judges fraud about facts of the case and also abuse of discretion in affirming the district court's imposition of sanction and award of attorney fees on appeal and denial of petitioner's Petition for Rehearing involving petitioner's civil rights violation and conspiracy to violate petitioner's U.S. Constitutional Rights to equal protection and equal privileges under the law because of petitioner's race and national origin and also for fraud and dirty tricks.

OPINIONS BELOW

The Order of the Court of Appeals affirming the district court's denial of petitioner's Rule 60(b)(3) and (b)(6) motion and imposing sanction and awarding attorney fees on appeal appears in Appendix A to this Petition. The Order of the Court of Appeals denying Petition for Rehearing appears in Appendix B to this Petition. The Order of the district court about petitioner's Rule 60(b)(3) and (b)(6) motion to vacate summary judgment appears in Appendix C to this Petition.

JURISDICTION

The Court of Appeals' Order regarding this matter was filed on January 25, 1993. A timely Petition for Rehearing was filed on February 3, 1993. The Court of Appeals' denial of the Petition for Rehearing was issued on February 23, 1993. This Court's jurisdiction is invoked under Title 28, U.S.C. Section 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

1. Civil Rights act under Title 42, U.S.C. Section 2000e-5(f)(1) for an unlawful employment discrimination based upon race and national origin and Federal Age Discrimination in Employment Act, Title 29, U.S.C. Section 621 et seq. .

2. United States Constitution Title 42, U.S.C. Sections 1985(3) and 1986:

(a) Section 1985(3) of the United States Constitution in relevant part provides: If two or more persons in any State or Territory conspire, ... whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

(b) Section 1986 of the United States Constitution in relevant part provides: Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, ...

STATEMENT OF THE CASE

The United States District Court, Southern District of Ohio, Eastern Division, had jurisdiction pursuant to Title 42, U.S.C. Section 2000e-5(f)(1) and Title 29, U.S.C. Section 621 et seq..

1. Petitioner was done wrong by petitioner's former employer by and through its agents and petitioner's civil rights was violated. Accordingly, on time, petitioner filed a complaint with the Ohio Civil Rights Commission (OCRC) in writing with supporting documents for investigation and, also requesting the OCRC to send the complaint to the Federal Equal Employment Opportunity Commission because petitioner wanted the complaint handled by the Federal Equal Employment Opportunity Commission. The OCRC did not do a good job of investigation because as soon as petitioner received notification of the OCRC decision, petitioner wrote a letter to the OCRC asking, among other things, how did the OCRC agent determined that the management of petitioner's former employer told them truth ? Petitioner questioned the OCRC in that manner because petitioner presented to the OCRC direct proof that the management of petitioner's former employer has a habit of lying and has perjured to the U.S. Senate Hearing Committee. But the OCRC instead of answering petitioner's questions deliberately misrepresented facts in its answer. So, petitioner wrote to the Federal Equal Employment Opportunity Commission to get answers to petitioner's questions from the OCRC and also to investigate. After sometime the Federal Equal Employment Opportunity commission mailed its determination and in it did not answer the questions petitioner posed to the OCRC but gave petitioner permission to sue petitioner's former employer.

2. Petitioner, then, within the time allowed by the Federal Equal Employment Opportunity Commission, pro se, filed a complaint giving in detail both front end and back end of the events in the U.S. District Court. In short, petitioner was born in India on May 30, 1935, and of the Asian race and came to this country as a student to study pharmacy in 1960 and in 1963 earned a B. Sc. degree majoring in pharmacy from a College of Pharmacy in Philadelphia, PA. Since in those days Pennsylvania

law required that for an individual to obtain a license to practice as a pharmacist an individual, among other things, not only should have a B. Sc. or equivalent degree in pharmacy but also be a citizen of U.S. and PA. And since petitioner was not a citizen of U.S. then, still on student visa, so did not receive a license to practice pharmacy. But petitioner went on for higher education and after finishing higher education went on to research involving neurocommunication and integration in an expression of organismic behavior, that is, Neurosciences. In due time petitioner also became a U.S. citizen. In 1983 petitioner was unemployed and one day petitioner came upon a newspaper advertisement for a junior pharmacist position, which required a degree in pharmacy only, no license required, from National Pharmacy, Elmwood Park, New Jersey. Petitioner responded to the advertisement and was offered a junior pharmacist position and petitioner started working from April 1983. At that time National Pharmacy was under the umbrella of a separate corporation. But latter in 1983 that corporation sold National Pharmacy to a different corporation and this new corporation was expanding and opening a new plant at Columbus, Ohio, in 1984, so were looking for workers to transfer to Columbus, Ohio. And in February 1984 petitioner transferred to respondent's plant at Columbus, Ohio. Before transferring to Columbus, petitioner inquired with the Ohio State Board of Pharmacy as to how petitioner can obtain a license to practice pharmacy and explained to the Board of Pharmacy that petitioner has earned pharmacy degree and a citizen of U.S. . Ohio State Board of Pharmacy explained that all petitioner has to do is register with the Ohio State Board of Pharmacy as an intern and to finish the required number of internship hours at petitioner's own choice of place and then to take the Board administered pharmacy licensor examination and if petitioner pass the examination then the Board of Pharmacy would issue a Registered Pharmacist License. So, after transferring to Columbus plant, in Ohio, petitioner registered with the Ohio State Board of Pharmacy as an intern of the Ohio State Board of Pharmacy and started using the work hours at respondent's plant towards petitioner's internship hours. After finishing the required internship hours, in January 1985

petitioner took the Ohio State Board of Pharmacy administered pharmacy licensor examination and the Board of Pharmacy at the beginning of March of 1985 informed petitioner that petitioner passed the pharmacy licensor examination and issued a Registered Pharmacist License. Respondent after seeing petitioner's Registered Pharmacist License hired petitioner as a Registered Pharmacist on or about March 5, 1985. Sometime toward the latter part of 1985 respondent by and through its management team Jack Siddle, Donald Ivanoff and Steve Harris started initiating conditioning, that is, experimenting on petitioner to increase petitioner's prescription checking rate by telling petitioner to give in writing stating "I (petitioner) would improve my checking rate (i.e., prescription checking rate) within the next 30 days or else I should be terminated". Petitioner refused to give respondent's management team in writing but said petitioner would try to improve petitioner's prescription checking rate. Next day respondent again through one of its management team, Steve Harris, started the same thing and asked petitioner why petitioner would not give in writing what they wanted petitioner to do ? Petitioner answered petitioner is not sure that petitioner can improve prescription checking rate that much and also said that if petitioner make mistake then all of you are going to jump all over petitioner. Steve Harris then said that he (Steve Harris) has put some patient in hospital but the company has still made him Pharmacist Supervisor. Petitioner asked Steve Harris what happened ? Steve Harris answered that he sent Halcion for Halotestin and said don't worry about mistake just think of improving your checking rate if you want to keep your job. Since then petitioner improved petitioner's checking rate and kept up with the plant's productivity rate. About two years latter on June 30, 1987, respondent by and through its management team Jack Siddle and Steve Harris called petitioner to the front office area and showed petitioner a mistake. After inquiring petitioner found out that petitioner failed to catch the error which was there. Respondent's management team had a piece of paper with them and gave the paper to petitioner and asked petitioner to read the paper and to sign. The paper was titled Notice of Disciplinary

Action dated 6-30-87, and on it written, among other things, which meant petitioner should not make an error for 60 days. Petitioner read but refused to sign. Because, among other things, the error that petitioner failed to catch also belonged to the same therapeutic class and as such could not have adversely affected the safety or welfare of the patient, yet respondent's agents marked a box on this piece of paper which represented that the error adversely affected the safety or welfare of others. Respondent's agents became irritated when petitioner refused to sign. Jack Siddle wrote by hand on that paper "Present and Refused to Sign Jo Hazra" then both Jack Siddle and Steve Harris signed the paper and gave petitioner the original (See Exhibit 1 attached with Complaint). On July 27, 1987, petitioner was again called to the front office area and was shown an error. As before after inquiring petitioner found out that petitioner failed to catch the error that was there. As usual respondent's agents Jack Siddle and Steve Harris had with them a piece of paper which they signed and gave the original to petitioner. The paper was titled Notice of Disciplinary Action dated 7-27-87, and petitioner noted that respondent shifted the condition to 90 days on this second Notice of Disciplinary Action of 7-27-87 (See Exhibit 2 attached with Complaint). Petitioner was shocked to see that because respondent knew before hand that petitioner failed to catch an error within 30 days of the first Notice of Disciplinary Action and yet respondent by and through its agents shifted the condition to 90 days. On October 30, 1987, petitioner was called to the front office area and in the room there were respondent's agents Jack Siddle, Sam Bornhold and Steve Harris. Jack Siddle had a piece of paper with him and Jack read from the paper, which in essence said as of October 30, 1987, petitioner is terminated from employment from respondent's company (See Exhibit 3 attached with Complaint). However, about two to three days before that date of October 30, 1987, that is, termination date, petitioner was shown two errors which petitioner failed to catch. After Jack Siddle read that petitioner is terminated then all of them signed and Jack handed the original to petitioner and then Jack asked if petitioner has anything to say. Petitioner answered no, all of you

have decided so petitioner has to follow. Sam Bornhold then said that petitioner has a choice. Petitioner asked Sam what choice? Sam answered petitioner could resign. Petitioner then asked Sam what difference it makes ? Sam answered if petitioner resign then they will remove those papers from petitioner's file and when someone would contact them they will tell that petitioner did work for respondent but resigned effective October 30, 1987. Sam also added that petitioner do not have to give any reason as to why petitioner is resigning, but just say that petitioner is resigning as of Friday, October 30, 1987, and to bring the resignation letter to his office on Monday, November 2nd. Petitioner did not give respondent or any of its agents any resignation letter (See Complaint of Amended Complaint).

3. Respondent through its counsel submitted answer and in it denied, among other things, that respondent by and through its agents experimented on petitioner with threat of termination to increase petitioner's prescription checking rate and that on the date of termination attempted to blackmail petitioner and sent a copy to petitioner (See Answer of Defendant National Rx Services, Inc.). Respondent's counsel also notified petitioner about taking deposition from petitioner. Petitioner informed respondent's counsel date(s), time and conditions about deposition. Petitioner, then, submitted interrogatories specifying that the following interrogatories be answered under oath by your officers in your behalf who know the facts first-hand about which inquiry is made and sent the interrogatories to respondent's counsel. Just before taking deposition from petitioner respondent's counsel sent a stipulation asking petitioner's permission for protective order about petitioner's deposition materials. Petitioner rejected respondent's counsel idea of protective order. So, after taking deposition from petitioner respondent's counsel filed papers with the district court for protective order about deposition materials. Petitioner filed with the court papers opposing granting protective order against petitioner's deposition materials. In the meantime respondent's counsel in concert with respondent perpetrated fraud in "Defendant's Response to Plaintiff's Interrogatories and Document Production Requests"

by denying facts which transpired between petitioner and respondent's agents and also perpetrated dirty tricks on petitioner by not identifying under oath who is answering petitioner's interrogatories. So, petitioner filed with the district court "Motion to Compel Answer to Interrogatories by Plaintiff" and submitted to the court what petitioner presented to respondent's counsel and what petitioner got in response from respondent's counsel.

4. A magistrate from the court notified for a pretrial conference. During the conference the magistrate granted respondent's protective order against petitioner's deposition materials in spite of petitioner's objection. And the magistrate told petitioner that since respondent's counsel has sent petitioner the verification page after petitioner filed motion to compel answer so the motion is moot. Finally, the magistrate said that everything would be stipulated and petitioner should agree and the conference ended. When petitioner received the magistrate's written report about the conference from the court and a stipulation from respondent's counsel asking petitioner to sign, petitioner rejected counsel's stipulation because of paragraph 3 (See a copy of the failed "Stipulation" is attached as an Appendix to the Pro Se Apellant's Brief filed on August 28, 1992). Because, among other things, respondent's counsel wanted petitioner to sign saying that petitioner is hereby withdrawing petitioner's motion to compel. Finally, the magistrate issued an order granting respondent's protective order against petitioner's deposition materials (See Order of Oct. 5, 1989 and April 26, 1990).

5. Because respondent's counsel during the pretrial conference talked to the magistrate about summary judgment motion, so, after the pretrial conference petitioner started doing research to find out what summary judgment involves and what petitioner has to do. And petitioner came to know about Rule 56 of the F.R.C.P. and this Court's rulings about summary judgment motion in 1986 in two cases (1) Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986) and (2) Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986) which gave petitioner guidance as to how to respond to summary judgment motion and what

judges should not do. Also, petitioner came upon this Court's ruling in which this Court referring to its previous rulings involving "mixed-motives" set guidelines for civil rights violation determined in Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S. Ct. 1775 (1989).

6. However, because petitioner knew respondent's counsel and its Labor and Associate Counsel perpetrated fraud in answer to petitioner's interrogatories, so, petitioner started inquiring with the line pharmacists of petitioner's former employer who worked with petitioner in the same plant where petitioner worked. Petitioner asked a few of the pharmacists, individually, were they ever asked to give in writing stating "I would improve my checking rate (i.e., prescription checking rate) within the next 30 days or else I should be terminated" ? From the answers petitioner found out that most of them were not asked to give in writing stating "I would improve my checking rate (i.e., prescription checking rate) within the next 30 days or else I should be terminated" and these were white pharmacists. Out of the few pharmacists that petitioner inquired, one said he was asked but not in the same manner. The one who was asked he said, he was asked to sign a piece of paper which had to do with improving his prescription checking rate and when he did not agree to sign , petitioner's former employer's agents made a deal with him saying that if he improved by about 10 per hour it will be all right. This individual pharmacist is also white. Petitioner then asked this individual pharmacist, was Jack Siddle present in the room when that happened ? This individual pharmacist answered, yes, Jack Siddle was present in the room. This Court may be wondering why petitioner asked if Jack Siddle was present in the room. Please allow petitioner to explain. In pharmacy business employer operates by receiving terminal distributor license through Registered Pharmacist's License, that is, Licensed Pharmacist's. And Jack Siddle was respondent's Chief Pharmacist at the plant where petitioner used to work as well as this individual pharmacist worked. So, petitioner got proof that respondent did not treat white pharmacists similarly as petitioner was treated, and also respondent's counsel and its Labor

and Associate Counsel perpetrated fraud in answer to petitioner's interrogatories in "Defendant's Response to Plaintiff's Interrogatories and Document Production Requests", and petitioner would have no difficulty in proving that they perpetrated fraud.

7. In the meantime, because respondent perpetrated fraud in answer to petitioner's interrogatories and destroyed discoverable evidence by and through respondent's counsel and its Labor and Associate Counsel and agents (See Affidavit pp. 1-8, attached in support of the Rule 60(b)(3) and (b)(6) motion filed January 31, 1992, in the district court) and then, respondent's counsel filed motion for summary judgment. Therefore, in opposition to respondent's motion for summary judgment in an affidavit petitioner disputed respondent's facts, as well as, because respondent's counsel in concert with respondent perpetrated fraud in answer to petitioner's interrogatories and destroyed discoverable evidence (See Affidavit pp. 1-8, cited above) and then filed motion for summary judgment, so, petitioner also reaffirmed the facts of the complaint and amended complaint in the affidavit to show that there is a genuine issue for trial as required by F.R.C.P. 56(e) (Please note this is also according to what this Court stated with respect to the summary judgment motion in Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553 (1986); note also it has been cited at p. 2 of the Brief in Support of the Motion to Vacate Judgment under Rule 60(b)(3) and (b)(6) filed January 31, 1992), and also to indicate to the district court what petitioner was going to prove (See Plaintiff's Motion to Deny Defendant's Motion for Summary Judgment and attached Affidavit).

8. Petitioner obtained from the Federal Equal Opportunity Commission (EEOC) what respondent's counsel submitted to EEOC. From the materials petitioner discovered that EEOC did not do any investigation of its own but made their recommendation from the materials what respondent's counsel sent to the Ohio Civil Rights Commission (OCRC). Note this Court has been informed that EEOC did not answer the questions petitioner posed to the OCRC but gave permission to sue petitioner's former employer (See above, Paragraph 1). And going over the

materials petitioner discovered that respondent's counsel perpetrated fraud just as they perpetrated fraud in "Defendant's Response to Plaintiff's Interrogatories and Document Production Requests". So, petitioner filed on June 6, 1990, "Plaintiff's Motion to Hold Defendant and Defense Counsel on Fraud and Fraud Upon the Court if the Defendant Fail to Meet Plaintiff's Challenge and to Allow Plaintiff to Add Another Count into the Amended Complaint Under Tort", and attached to the motion, as an example, a page from the materials that petitioner received from the EEOC which respondent's counsel submitted to the OCRC. From this page petitioner realized that respondent's counsel in response to the OCRC inquiry knowing that petitioner, among other things, claimed civil rights violation based on age and race, so, respondent's counsel made a pharmacist of the same race as that of petitioner's but in the age category of 30's to 61 years of age. Proof, see the attachment page that was submitted to the district court with the above titled motion and note Number 9 Staff Registered Pharmacist, that is, Tu, Ann-Sheng, listed as Asian race, that is same race as petitioner's, and 61 years of age. But after petitioner challenged as to the truth of the age of Number 9 Staff Registered Pharmacist being 61 years of age, respondent's counsel failed to prove that in April 1988 , when respondent's counsel sent that sheet of page to the OCRC , Number 9 Staff Registered Pharmacist was 61 years of age. On the contrary, in 1988 Number 9 Staff Registered Pharmacist was in the 30's because Number 9 Staff Registered Pharmacist's date of birth is March 9, 1951 (See Defendant's Memorandum Contra Plaintiff's Motion to Hold on Fraud p. 3). The petitioner attached with the above entitled motion this particular sheet of page because not only to prove that respondent's counsel perpetrated fraud but also to prove a prima facie case of age discrimination because pharmacist numbers 29 to 32 were hired after petitioner was terminated and all of them were under 40. Note this was indicated to the district court (See Brief in Support of the Motion to Vacate Judgment pp. 4-5, filed with the Rule 60(b)(3) and (b)(6) motion).

9. The district court judge, however, without a hearing or anything issued an order granting respondent's motion for

summary judgment (See Opinion and Order of September 5, 1990).

10. Within the allowed time petitioner then filed a motion under Rule 59(e) to vacate the judgment to alter. The judge from the district court in an Opinion and Order of February 12, 1991, affirmed his previous decision of granting respondent's motion for summary judgment (See Opinion and Order filed February 12, 1991).

11. Petitioner, then, within the allowed time, pro se, filed a Notice of Appeal and appealed the district court's decision to the Sixth Circuit Court of Appeals. The Sixth Circuit Court of Appeals send petitioner papers to file "Pro Se Appellant's Brief". Petitioner then filed a motion to the Sixth Circuit Court of Appeals to permit appeal on original records because there was no hearing or trial and the motion was granted. Petitioner filed, within the time allowed, "Pro Se Appellant's Brief" in the Sixth Circuit Court of Appeals (See Pro Se Appellant's Brief filed March 25, 1991). The Sixth Circuit Court of Appeals issued an Order on July 22, 1991, and in it affirmed the district court's judgment. Because the appeals' court judges, among other things, in their Order omitted to consider "mixed motive", so, within the allowed time, petitioner, pro se, filed a "Petition for Rehearing". On November 26, 1991, the appeals' court judges in an Order stated "finds no issue of law or fact that was overlooked or misapprehended." and reaffirmed the judgment of the district court (See App. D).

12. Since this Court ruled that the district court may entertain a Rule 60(b) motion without leave by the appellate court (See Standard Oil Co. of California v. United States, 429 U.S. 17, 97 S.Ct. 31 (1976); also see Wright & Miller, Federal Practice & Procedure: Civil Section 2873, Pocket Part, (1992)); and since judge Smith from the district court perpetrated fraud about facts in his Opinion and Order filed February 12, 1991 (Proof, see Brief in Support of the Motion to Vacate Judgment under Rule 60(b)(3) and (b)(6) p. 3 along with the attached Affidavit pp. 9-14, with special emphasis on pp. 13-14, paragraphs 10 and 11, which would show district court judge Smith's fraud about facts), and

judges Merritt, Keith and Celebrezze from the appellate court also perpetrated fraud about facts in their Order of November 26, 1991 (Proof, see Brief in Support of the Motion to Vacate Judgement under Rule 60(b)(3) and (b)(6) pp. 6-8 along with the attached Affidavit pp. 14-18, paragraphs 12 and 13, which would show fraud about facts of all the judges names therein). Therefore, pursuant to Rule 60(b)(3) and (b)(6) of the Federal Rules of Civil Procedure petitioner, pro se, filed a Motion to Vacate Judgment in the district court (See Motion to Vacate Judgment under Rule 60(b)(3) and (b)(6) with attached Brief in Support of the Motion to Vacate Judgment and Affidavit filed January 31, 1992).

13. The same judge from the district court in an Order of June 30, 1992, denied petitioner's Rule 60(b)(3) and (b)(6) motion and imposed sanction (See App. C).

14. Because judge Smith from the district court abused judge's discretion in considering petitioner's Rule 60(b)(3) and (b)(6) motion, therefore, on time, petitioner filed a Notice of Appeal and appealed the district court's decision to the Sixth Circuit Court of Appeals. The appeals' court send petitioner paper to file "Pro Se Appellant's Brief". As before, petitioner filed a motion to the appeals' court to permit appeal on original records because there was no hearing or trial and the motion was granted. Petitioner on time filed "Pro Se Appellant's Brief" and in the brief pointed out two counts of abuse of discretion by the district court; (1) abuse of discretion in considering petitioner's Rule 60(b)(3) and (b)(6) motion and (2) abuse of discretion in imposing Rule 11 sanction on petitioner (See Pro Se Appellant's Brief filed August 28, 1992).

15. Respondent filed Defendant-Appellee's Brief.

16. On January 25, 1993, the appeals' court issued an Order and affirmed the district court's decision and imposed sanction (See App. A). The appeals' court in its Order of January 25, 1993, omitted to consider the fact that judge Smith from the district court in his Order of June 30, 1992, misrepresented fact and stated "The Court entered its judgment on September 5, 1990. Therefore, his motion alleging fraud under Rule 60(b)(3) is un-

timely." (See App. C, under Law and Analysis). This is misrepresentation of fact because judge Smith perpetrated fraud about facts in his Opinion and Order of February 12, 1991, in response to petitioner's Rule 59(e) motion to vacate summary judgment. Note this was indicated in Pro Se Appellant's Brief filed August 28, 1992 (See Pro Se Appellant's Brief filed August 28, 1992, answer to question 2 for facts and answer to question 3 for law). Accordingly, petitioner on time filed a Petition for Rehearing and in it provided direct proof that the appeals' court omitted to consider the fact that judge Smith from the district court misrepresented fact in Smith's Order of June 30, 1992 (See Petition for Rehearing filed February 3, 1993).

17. On February 23, 1993, the appeals' court issued an Order and denied petitioner's Petition for Rehearing (See App. B).

REASONS FOR GRANTING THE PETITION

This case presents important questions about abuse of discretion in considering petitioner's appeal on Rule 60(b)(3) and (b)(6) motion to vacate summary judgment obtained by respondent's counsel because of attorneys and judges fraud and imposition of sanction. The appeals' court concluded that the district court did not abuse its discretion in denying petitioner's motion to vacate judgment filed pursuant to Rule 60(b)(3) and (b)(6) and imposing sanction according to Rule 11 of the F.R.C.P., and accordingly, held frivolous appeal and awarded attorney fees on appeal. Because the appeals' court omitted to consider the fact that judge Smith from the district court in his Order of June 30, 1992, misrepresented fact, so, petitioner filed a timely Petition for Rehearing. The appeals' court denied Petition for Rehearing. As a result the appeals' court not only allowed petitioner's civil rights to be violated but also petitioner's U.S. Constitutional Rights to equal protection and equal privileges under the law be deprived because of petitioner's race and national origin and pay

for the imposed sanction and attorney fees for appeal to respondent.

1. This unprecedented ruling depicts serious abuse of discretion. Because judge Smith from the district court in his Order of June 30, 1992, misrepresented fact and stated "The Court entered its judgment on September 5, 1990. Therefore, his motion alleging fraud under Rule 60(b)(3) is untimely." (See App. C, under Law and Analysis). This is misrepresentation of fact because judge Smith perpetrated fraud in his Opinion and Order of February 12, 1991, in response to petitioner's Rule 59(e) motion to vacate the summary judgment. It should be noted that petitioner filed Rule 60(b)(3) and (b)(6) motion because of, among other things, the judges fraud about facts. Proof, see Brief in Support of the Motion to Vacate Judgment under Rule 60(b)(3) and (b)(6) p. 3 along with the attached Affidavit pp. 9-14, with special emphasis on pp. 13-14, paragraphs 10 and 11, which would show judge Smith's fraud about facts; also see Brief in Support of the Motion to Vacate Judgment under Rule 60(b)(3) and (b)(6) pp. 6-8 along with the attached Affidavit pp. 14-18, paragraphs 12 and 13, which would show fraud of all the judges named therein. Note also that these facts were indicated in the Pro Se Appellant's Brief filed August 28, 1992, in answer to question 2 for facts and in answer to question 3 for law.

This Court should note that judge Smith misrepresented fact, as stated above, to cover-up, because Smith knowing from petitioner's "Motion to Compel Answer to Interrogatories by Plaintiff" that although respondent's counsel in concert with respondent perpetrated fraud in "Defendant's Response to Plaintiff's Interrogatories and Document Production Requests" but did not succeed in defrauding petitioner, because petitioner upon receipt of "Defendant's Response to Plaintiff's Interrogatories and Document Production Requests" from respondent's counsel immediately filed petitioner's "Motion to Compel Answer to Interrogatories by Plaintiff", then Smith in concert with Smith's associate, magistrate Kemp, attempted to deceive and defraud petitioner by and through respondent's counsel by allowing respondent's counsel to write and send to petitioner the

"Stipulation" (See Stipulation attached as an Appendix to Pro Se Appellant's Brief filed August 28, 1992; also note Smith in concert with Smith's associate misrepresented facts in magistrate's Order of Oct. 5, 1989 and April 26, 1990, proof, see Pro Se Appellant's Brief filed August 28, 1992, pp. 6-7, answer to question 2), then Smith realizing that Smith and his associate and respondent's counsel all failed in deceiving and defrauding petitioner [Proof, see the response respondent's counsel received from petitioner and what respondent's counsel wrote to magistrate Kemp and what petitioner did (this Court should note that in Pro Se Appellant's Brief filed August 28, 1992, answer to question 2, appeals' court was asked to order respondent's counsel to produce those)], then Smith allowed respondent's counsel to file motion for summary judgment and granted respondent's motion for summary judgment, then Smith realizing from petitioner's Rule 59(e) motion that neither Smith nor respondent's counsel succeeded in deceiving and defrauding petitioner, so, then Smith affirmed Smith's decision of granting respondent's motion for summary judgment and justified Smith's action by perpetrating fraud about facts in Smith's Opinion and Order of February 12, 1991 (see above), then Smith realizing from petitioner's Rule 60(b)(3) and (b)(6) motion that Smith got caught that Smith perpetrated fraud about facts in Smith's Opinion and Order of February 12, 1991, so, then Smith abused Smith's discretion in considering petitioner's Rule 60(b)(3) and (b)(6) motion and to cover-up Smith's abuse of discretion misrepresented fact and denied petitioner's Rule 60(b) motion and imposed sanction. Note this was presented to appeals' court (see Petition for Rehearing filed February 3, 1993, pp. 2-4).

And not only judge Smith perpetrated fraud about facts in his Opinion and Order of February 12, 1991 (see above), but also construed diametrically opposite factors as one and the same. Proof, note the material quoted below;

> "Even if plaintiff was subject to the alleged pressure to "speed up", plaintiff has admitted that there was no disparate treatment in the applica-

> tion of the pressure. Plaintiff admitted that "all of the pharmacists were under the same pressure in terms of speed". (Plaintiff's deposition p. 171). "(See Opinion and Order, filed Feb. 12, 1991, pp. 9-10);

that is, "pressure to "speed up"", is not same as willfully and deliberately conditioning petitioner, that is, willfully and deliberately experimenting on petitioner, with threat of termination from the employment to increase petitioner's production rate by telling petitioner to give in writing stating "I (petitioner) would improve my checking rate (i.e., prescription checking rate) within the next 30 days or else I should be terminated", and note the condition was allowed to continue for about two years, and note also disparate treatment refer to willfully and deliberately conditioning, that is, willfully and deliberately experimenting on, petitioner with threat of termination from the employment to increase petitioner's production rate [See Brief in Support of the Motion to Vacate Judgment pp. 3-4, and Affidavit pp. 11-12, filed on January 31, 1992, in support of the motion under Rule 60(b)(3) and (b)(6)]. This Court should note that "pressure to "speed up"" is not same as willfully and deliberately conditioning, i.e., experimenting on, petitioner with threat of termination from the employment to increase petitioner's production rate by telling petitioner to give in writing stating "I (petitioner) would improve my checking rate (i.e., prescription checking rate) within the next 30 days or else I should be terminated"; and they are not same not just because of a mere expression in linguistic differences between the two but, rather, a legally valid point. Proof, see Comment b to Section 8A of Chapter 1 Restatement of the Law 2d, Torts (1965) 15; the differentiation between negligence and intentional tort. Note this was indicated to the appeals' court (See Pro Se Appellant's Brief filed August 28, 1992, pp. 2-3, answer to question 2 for facts and p. 8, answer to question 3 for law).

This Court should note that although petitioner in answer to question 3 at p. 8 of the "Pro Se Appellant's Brief" filed August 28, 1992, presented proof by citing Comment b to Section 8A of Chapter 1 Restatement of the Law 2d, Torts (1965) 15, the differ-

entiation between negligence and intentional tort, that "pressure to "speed up"" is not same as willfully and deliberately conditioning, i.e., experimenting on, petitioner with threat of termination from the employment to increase petitioner's production rate (see above), but according to respondent's counsel that never took place [See Affidavit pp. 2-3, paragraph 2, attached in support of the motion under Rule 60(b)(3) and (b)(6) filed on January 31, 1992]. At this juncture this Court should note that the deposition from petitioner was taken at a time when petitioner's interrogatories were pending with respondent's counsel. Keeping this in mind this Court should note what this Court stated about discovery process in footnote 12 in Price Waterhouse:

> "Nothing in this opinion should be taken to suggest that a case must be correctly labeled as either a "pretext" case or a "mixed-motives" case from the beginning in the District Court; indeed, we expect that plaintiffs often will allege, in the alternative, that their cases are both. Discovery often will be necessary before the plaintiff can know whether both legitimate and illegitimate considerations played a part in the decision against her."

See Price Waterhouse v. Hopkins, 490 U.S. 228, 247, 109 S.Ct. 1775, 1789, n. 12 (1989). This Court should also note that this is a violation of the rule of law by judge Smith. Because this Court with respect to the summary judgment motion stated:

> "that at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." (See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 2511 (1986)).

Indeed, this Court instructed to use directed verdict, but this

Court stated "If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed." (See Anderson v. Liberty Lobby, Inc., cited above, at 250-251, 2511). Thus, judge Smith violated the correct legal principles as enunciated by this Court with respect to the summary judgment, and also violated the Notes on 1963 Amendment to Rule 56 as promulgated by the Advisory Committee. Since the Advisory Committee states in its Note to the 1963 Amendment of Rule 56(e):

> "Where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate."

Note these were indicated to the district court in the Brief in Support of the Motion to Vacate Judgment under Rule 60(b)(3) and (b)(6) at p. 4. This Court should also note that as petitioner stated above in paragraph 7, under Statement of the Case, that petitioner filed its response to respondent's summary judgment motion according to the ruling of this Court. Since this Court with respect to the summary judgment motion in a companion case stated:

> "We do not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment. Obviously, Rule 56 does not require the nonmoving party to depose her own witnesses. Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves, and it is from this list that one would normally expect the nonmoving party to make the showing to which we have referred."

See Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553 (1986).

Furthermore, judge Smith also under pretext of opinion violated rules of law to aid and abate respondent's counsel and respondent. Because the instant case has in it aspects of both "mixed motive" and also "mixed motive" and pretext [Proof, see Pro Se Appellant's Brief filed August 28, 1992, pp. 9-10, answer to question 3; also see Brief in Support of the Motion to Vacate Judgment pp. 6-8 and Affidavit pp. 14-18, paragraphs 12 and 13, filed on January 31, 1992, with the motion under Rule 60(b)(3) and (b)(6)], therefore, as stated by this Court referring to its previous rulings involving "mixed-motives" in Price Waterhouse (See Price Waterhouse v. Hopkins, cited above, at 248-250, 1789-1790), after petitioner proves his case respondent has to bring data to prove by a preponderance of the evidence that: even if petitioner would not have been experimented on with threat of termination to increase petitioner's production rate, petitioner's production rate would have increased to the level of what it was in 1987 and petitioner would have failed to catch error(s); and even if respondent would have reduced the average hourly Rx checking rate for the whole plant to less than what it was in April 1987, petitioner's production rate still would have increased and petitioner would have failed to catch error(s). Respondent has to bring the latter set of data also because respondent and its agents knowing for sure that if one is made to check fast would certainly make mistake, willfully and deliberately conditioned, that is, willfully and deliberately experimented on, petitioner with threat of termination to increase petitioner's production rate, and allowed the condition to continue for about two years, and then knowing that petitioner failed to catch an error within 30 days of the first Notice of Disciplinary Action, then under pretext of giving an opportunity to correct deliberately and maliciously shifted and set the condition to 90 days while respondent kept the plant's productivity same as before without even lowering the plant's average Rx checking rate. Note this was indicated to the appeals' court (See Pro Se Appellant's Brief filed August 28, 1992, pp. 9-10, answer to question 3). And since judge Smith realizing that Smith and his associate and respondent's counsel all failed in deceiving and defrauding petitioner even though respondent's counsel in

concert with respondent perpetrated fraud in "Defendant's Response to Plaintiff's Interrogatories and Document Production Requests" then Smith allowed respondent's counsel to file motion for summary judgment (see above). Therefore, according to the guidelines set forth by this Court in Price Waterhouse (cited above), respondent's counsel was supposed to submit in support of the motion with respondent's motion for summary judgment data to prove by a preponderance of the evidence that: even if petitioner would not have been experimented on with threat of termination to increase petitioner's production rate, petitioner's production rate would have increased to the level of what it was in 1987 and petitioner would have failed to catch error(s); and even if respondent would have reduced the average hourly Rx checking rate for the whole plant to less than what it was in April 1987, petitioner's production rate still would have increased and petitioner would have failed to catch error(s). Note respondent's counsel has not submitted any such data in support of the motion for summary judgment (See Defendant's Motion for Summary Judgment). Note this was presented to the appeals' court (See the Petition for Rehearing filed February 3, 1993). Also note that appeals' court judges perpetrated fraud about this [See Pro Se Appellant's Brief filed August 28, 1992, p. 9, and Brief in Support of the Motion to Vacate Judgment pp. 6-8, and Affidavit pp. 14-18, paragraphs 12 and 13, filed January 31, 1992, with the motion under Rule 60(b)(3) and (b)(6)].

Rule 60(b) motion is addressed to the sound discretion of the court and in exercising its discretion under F.R.C.P. 60(b), the court is to be guided by an equitable principles. Wright and Miller, Federal Practice and Procedure: Civil Section 2875. Judge Smith has abused discretion in considering petitioner's Rule 60(b) motion and to cover-up his abuse of discretion misrepresented fact and denied petitioner's motion in his Order of June 30, 1992 (See App. C). And Smith abused discretion after realizing that Smith got caught that Smith perpetrated fraud about facts in his Opinion and Order of February 12, 1991, so, Smith abused discretion to cover-up and misrepresented fact as shown above (See also Pro Se Appellant's Brief filed August 28, 1992, pp. 8-9, answer

to question 3). And now appeals' court abused its discretion in affirming district court's decision (See App. A) and denying petitioner's Petition for Rehearing (See App. B).

This is an abuse of discretion by the appeals' court not only because judge Smith from the district court abused discretion in considering petitioner's Rule 60(b)(3) and (b)(6) motion as shown above, but also because the citations cited by the appeals' court in support of its decision to affirm the district court's decision have no bearing to the facts of the instant case. Since none of cases cited at page 2 by the appeals' court in its Order of January 25, 1993, in support of the district court's decision to deny petitioner's Rule 60(b)(3) and (b)(6) motion have any claim of fraud by either attorneys or judges (See App. A, references cited at p. 2), whereas in the instant case petitioner proved fraud by judges and provided evidence of fraud and conspiracy and dirty tricks by attorneys (see above). Likewise, the case cited by the appeals' court in its Order of January 25, 1993, page 2, e.g., Mastini v. American Tel. & Tel. Co., 369 F.2d 378, 379 (2d Cir. 1966), cert. denied, 387 U.S. 933 (1967) (See App. A, p. 2), can easily be distinguished from the facts of the instant case. Because in the Mastini case there was no claim of fraud by judges, whereas in the instant case there is direct proof of fraud about facts by judges (see above). Although, in Mastini case there was claim of fraud but there was no claim of fraud by attorneys. Besides, in Mastini case the appeals' court stated "the allegations of fraud were not substantiated." (See Mastini v. American Tel. & Tel. Co., cited above, at p. 379), whereas in the instant case none of the justices have been able to claim that.

Moreover, the appeals' court judges Kennedy, Suhrheinrich and Wellford's statement "the arguments presented in Mr. Hazra's Rule 60(b) motion have been repeatedly rejected by the district court and this court on appeal." (See App. A, p. 2), is not true. Because as stated above and also in the Affidavit submitted in support of the Rule 60(b) motion at pp. 14-18, paragraphs 12 and 13, that since petitioner did not see in appellate court judges Merritt, Keith and Celebrezze's Order of July 22, 1991, any mention of "mixed motive", so, petitioner in Petition

for Rehearing, among other things, informed the appeals' court that the court omitted to consider "mixed motive" (See Petition for Rehearing filed August 1991). Judges Merritt, Keith and Celebrezze in their Order of November 26, 1991, stated "finds no issue of law or fact that was overlooked or misapprehended." (See App. D) and reaffirmed the judgment of judge Smith of the district court. Since this Court has ruled and set guidelines involving "mixed motives" in Price Waterhouse (cited above), and since the instant case has in it aspects of both "mixed motive" and also "mixed motive" and pretext (see above), therefore, it would imply that respondent's counsel fulfilled its obligation by submitting data to prove by a preponderance of the evidence that: petitioner's production rate would have increased to the level of what it was in 1987 and petitioner would have failed to catch error(s) even if petitioner would not have been experimented on with threat of termination to increase petitioner's production rate; and even if respondent would have reduced the average hourly Rx checking rate for the whole plant to less than what it was in April 1987, petitioner's production rate still would have increased and petitioner would have failed to catch error(s). And since petitioner did not receive any such data from respondent's counsel, therefore, petitioner checked the court's docket entry and failed to find any such data entry in the court's docket. And it became apparent that judges Merritt, Keith and Celebrezze perpetrated fraud. And since this Court held that the district court may entertain a Rule 60(b) motion without leave by the appellate court (See Standard Oil Co. of California v. United States, cited above; also see Wright & Miller, Federal Practice and Procedure: cited above), so, on January 31, 1992, petitioner filed Rule 60(b)(3) and (b)(6) motion. And as this Court know by now that on June 30, 1992, the district court, among other things, denied petitioner's motion (See App. C). Therefore, the appeals' court judges contention that "the arguments presented in Mr. Hazra's Rule 60(b) motion have been repeatedly rejected by the district court and this court on appeal." (See App. A p. 2), is without any merit because there is no evidence to support such contention.

The appeals' court judges abused their discretion in affirming the district court's decision of June 30, 1992, and denying petitioner's "Petition for Rehearing" (see above). And since judge Smith from the district court realizing from petitioner's Rule 60(b) motion that Smith got caught that Smith perpetrated fraud about facts to aid respondent's counsel and respondent in his Opinion and Order of February 12, 1991, then abused Smith's discretion in considering petitioner's Rule 60(b) motion and to cover-up Smith's abuse of discretion misrepresented about fact (see above). Therefore, this Court should reverse the appeals' court decision. For the sake of arguments, even if it is considered that judge Smith entered his judgment on September 5, 1990, although Smith perpetrated fraud about facts to aid and abate respondent's counsel and respondent in response to petitioner's Rule 59(e) motion in his Opinion and Order of February 12, 1991, still it would constitute an abuse of discretion. Because in the instant case fraud was perpetrated by attorneys and judges, and subdivision (b)(6) authorizes relief for "any other reason justifying relief from operation of the judgment". And as this Court because of attorney's involvement in fraud, after 9 years of appellate mandate, vacated and reversed the lower court order in Hazel-Atlas Glass Co. (See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 332, U.S. 238, 64 S.Ct. 997 (1944)), so, this Court should vacate and reverse the lower court's order. This Court should reverse appellate mandate and remand to lower court not only because the appeals' court and the district court have abused discretion but also because although judge Smith in concert with his associate and respondent's counsel did attempt to deceive and defraud petitioner to sign "Stipulation" to nullify the issues, but have failed (see above), that is, issues are not moot. And as petitioner shown, even respondent counsel's law firm also involved in fraud, deception and dirty tricks (See Pro Se Appellant's Brief filed August 28, 1992, pp. 5-6, answer to question 2). And since aside from petitioner's civil rights violation now respondent, its affiant-deponent, its Labor and Associate Counsel, respondent's counsel and their law firm have conspired to violate petitioner's U.S. Constitutional Rights to equal protec-

tion and equal privileges under the law because of petitioner's race and national origin, and also perpetrated fraud and dirty tricks; and since the district court and the appellate court by abuse of discretion deprived petitioner's Constitutional Rights and civil rights, therefore, for the sake of justice, this Court should reverse appeals' court Order and direct the appeals' court to order the district court to allow petitioner to proceed to trial to prove petitioner's claim and to that end to amend petitioner's complaint as requested in Pro Se Appellant's Brief and Rule 60(b)(3) and (b)(6) motion.

2. Imposition of sanction on petitioner depicts serious abuse of discretion. Because this Court ruled that the district court may entertain a Rule 60(b) motion without leave by the appellate court (See Standard Oil Co. of California v. United States, cited above; also see Wright & Miller, Federal Practice and Procedure: cited above) and since attorneys and judges perpetrated fraud about facts (Proof, see above as well as Affidavit submitted in support of the Rule 60(b)(3) and (b)(6) motion), so, petitioner filed Rule 60(b)(3) and (b)(6) motion in the district court. Judge Smith from the district court denied petitioner's Rule 60(b) motion and imposed sanction pursuant to Rule 11 in his Order filed June 30, 1992 (See App. C). Imposition of sanction by the district court and its affirmance by the appeals' court is an abuse of discretion. Because this Court has now set forth standard of review for Rule 11 violation determination and held:

> "an appellate court should apply an abuse-of-discretion standard in reviewing all aspects of a district court's Rule 11 determination. A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence."

See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405, 110 S.Ct. 2447, 2461 (1990). It is an abuse of discretion because judge Smith from the district court perpetrated fraud about facts to aid and

abate respondent's counsel and respondent in his Opinion and Order of February 12, 1991, and now Smith realizing from petitioner's Rule 60(b)(3) and (b)(6) motion that Smith got caught that Smith perpetrated fraud about facts, so, abused Smith's discretion in considering petitioner's Rule 60(b)(3) and (b)(6) motion, and to cover-up Smith's abuse of discretion misrepresented fact and denied petitioner's Rule 60(b) motion (see above; note it was indicated in the Pro Se Appellant's Brief filed August 28, 1992, answer to question 4), and imposed sanction (See App. C). Affirmance of the imposition of sanction by the appeals' court in its Order of January 25, 1993 (See App. A) and its denial of petitioner's "Petition for Rehearing" in its Order of February 23, 1993 (See App. B) is an abuse of discretion, not only because it is not in accordance to this Court's standard of review for Rule 11 violation determination (see above; note it was indicated in the "Petition for Rehearing" filed February 3, 1993, pp. 5-6) but also because affirmance of judge Smith's denial of petitioner's Rule 60(b) motion is an abuse of discretion by the appeals' court as shown above. And award of attorney fees for appeal is an equally abuse of discretion. Therefore, this Court should reverse appellate mandate.

In summary, district court and appeals' court abuse of discretion should not be allowed to sustain to benefit respondent's counsel and its Labor and Associate Counsel and respondent, because they are attorneys and perpetrated fraud, aside from judges fraud about facts. Therefore, this Court should do what it has done in Hazel-Atlas Glass Co. v. Hartford-Empire Co., (cited above) for attorneys involvement in fraud. That is, this Court should vacate and reverse the appeals' court decision of 1993 with directions to appeals' court to set aside and to recall all of its mandates, and to issue mandate to the district court to reverse its order and to deny respondent's summary judgment motion and to allow petitioner to proceed to trial to prove petitioner's claim and to that end to allow petitioner to amend complaint pursuant to F.R.C.P. Rule 15(a) and (c) as requested in appellant's brief and Rule 60(b)(3) and (b)(6) motion. This Court should not allow lower courts' abuse of discretion to sustain because aside from

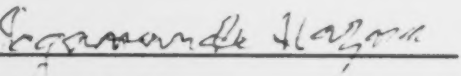
petitioner's civil rights violation now respondent, its affiant-deponent, its Labor and Associate Counsel, respondent's counsel and their law firm have conspired to violate petitioner's U.S. Constitutional Rights to equal protection and equal privileges under the law because of petitioner's race and national origin, and also perpetrated fraud and dirty tricks. And sustenance of lower courts' abuse of discretion would mean deprivation of petitioner's Constitutional Rights to equal protection and equal privileges under the law, which lower courts have done by abuse of discretion. Likewise, this Court should also vacate and reverse the appeals' court decision of 1993 mandating payment for sanction and attorney fees with direction to appeals' court to set aside and to recall all of its mandates, and to issue mandate to the district court reversing imposition of sanctions and ordering respondent to refund to petitioner all the money respondent has collected with interest, and to award to petitioner double the amount on costs related to the lawsuit because of fraud of respondent's counsel and its Labor and Associate Council in concert with respondent, and any other steps this Court wishes to take for the administration of justice.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

DATED: May 18, 1993.

Respectfully submitted,



Jogananda Hazra

Petitioner, pro se

No. 92-3770

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Filed January 25, 1993
Leonard Green, Clerk

JOGANANDA HAZRA,	)	
Plaintiff-Appellant,	)	
v.	)	ORDER
NATIONAL Rx SERVICES, INC.,	)	
Defendant-Appellee	)	NOT RECOMMENDED
	)	FOR FULL-TEXT
	)	PUBLICATION

BEFORE: KENNEDY and SUHRHEINRICH, Circuit Judges, and WELLFORD, Senior Circuit Judge.

Jogananda Hazra, an Ohio citizen, appeals pro se from a district court order denying his motion filed pursuant to Fed. R. Civ. P. 60(b)(3) and (6), and imposing Fed. R. Civ. P. 11 sanctions in favor of the defendant, in this action filed under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and the Age Discrimination in Employment Act, 29 U.S.C. § 621. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Mr. Hazra sought reinstatement, back pay, and punitive damages in this suit, alleging that he had been discharged from his position as a pharmacist on October 30, 1987, on the basis of his age, race, and national origin. The defendant moved for summary judgment, based on evidence that the discharge was due to frequent errors in checking prescriptions in violation of

an established policy. The district court granted defendent's motion and subsequently denied Hazra's Federal R. Civ. P. 59(e) motion to alter or amend. This court affirmed the district court's decision in an order filed July 22, 1991. On January 31, 1992, Mr. Hazra filed his motion to vacate judgment pursuant to Fed. R. Civ. P. 60(b)(3) and (6). The defendant filed a motion for sanctions on February 11, 1992. In an order filed June 30, 1992, the district court denied the Rule 60(b) motion and imposed sanctions against Mr. Hazra in the amount of $2,173.75. This timely appeal followed. This court reviews the June 30, 1992, order to determine whether the district court abused its discretion in denying Mr. Hazra relief under Rule 60(b). *In re Salem Mortgage Co.*, 791 F.2d 456,459 (6th Cir. 1986); *Smith v. Secretary of Health and Human Services*, 776 F.2d 1330, 1332 (6th Cir. 1985); *Windsor v. United States Dep't of Justice*, 740 F.2d 6, 7 (6th Cir. 1984) (per curiam). An abuse of discretion exists when the reviewing court is firmly convinced that a mistake has been made. *See In re Bendectin Litigation*, 857 F.2d 290, 307 (6th Cir. 1988), *cert. denied*, 488 U.S. 1006 (1989); *Schrand v. Federal Pac. Elec. Co.*, 851 F.2d 152, 156-57 (6th Cir. 1988).

Upon view, we conclude that the district court did not abuse its discretion in denying Mr. Hazra's motion to vacate judgment filed pursuant to Fed. R. Civ. P. 60(b)(3) and (6). Mr. Hazra's Rule 60(b) motion insofar as it alleged fraud was not filed within the time required by the rule. Thus, it was within the district court's considerable discretion to deny relief under this particular subsection.

Subsection (b)(6) will be properly invoked in "usual and extreme situations where principles of equity *mandate* relief." *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990) (original emphasis). Not only were no exceptional circumstances presented in this case, but the arguments presented in Mr. Hazra's Rule 60(b) motion have been repeatedly rejected by the district court and this court on appeal. A Rule 60(b) motion must be denied if, as here, it is merely an attempt to relitigate the case. *See Mastini v. American Tel. & Tel. Co.*, 369 F.2d 378, 379 (2nd Cir. 1966), *cert. denied*, 387 U.S. 933 (1967).

The test for the imposition of Rule 11 sanctions is whether the individual's conduct was reasonable under the circumstances. *Jackson v. Law Firm of O'Hara, Ruberg, Osborne & Taylor*, 875 F.2d 1224, 1229 (6th Cir. 1989). With this standard in mind, our review of the record and briefs leads us to the conclusion that the district court did not abuse its discretion when it imposed sanctions. *See Davis v. Crush*, 862 F.2d 84, 88 (6th Cir. 1988). Similarly, we conclude that this appeal is equally frivolous, and that defendant should receive its attorney fees on appeal. 28 U.S.C. § 1912; Fed. R. App. 38; *Wrenn v. Gould*, 808 F.2d 493, 504 (6th Cir. 1987). Accordingly, the defendant may submit a bill for attorney fees within fourteen days of this order.

The order denying Mr. Hazra relief under Rule 60(b) and awarding attorney fees in favor of the defendant is affirmed pursuant to Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

s/s

Clerk

No. 92-3770

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Filed February 23, 1993
Leonard Green, Clerk

JOGANANDA HAZRA	)	
Plaintiff-Appellant	)	
v.	)	ORDER
NATIONAL Rx SERVICES, INC.	)	
Defendant-Appellee	)	

BEFORE: KENNEDY and SUHRHEINRICH, Circuit Judges; and WELLFORD, Senior Circuit Judge.

Upon consideration of the petition for rehearing filed by the appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT

s/s

Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Filed June 30, 1992
Kenneth J. Murphy, Clerk

JOGANANDA HAZRA,

Plaintiff,

v. Case No. C-2-89-0551

NATIONAL Rx SERVICES, INC.,

Defendant

ORDER

This matter is before the Court upon Plaintiff Jogananda Hazra's Motion to Vacate Judgment and Defendant National Rx Services, Inc.'s Motion of Defendant to Award Sancations for Filing of Frivolous Pleading.

BACKGROUND

Plaintiff Hazra, a pro se litigant, brought this case in June of 1989 alleging that he was discharged from his employment with Defendant National Rx Services, Inc. because of his race, nationality, and age.

The Court granted Defendant's Motion for Summary Judgment on September 5, 1990, dismissing all of Plaintiff Hazra's claims.

On September 14, 1990, the Plaintiff filed a motion to vacate the Court's September 5, 1990 Order under Federal Rule of Civil Procedure 59(e). Though not raising even a scintilla of additional evidence suggesting that there was in fact unlawful

discrimination, the Plaintiff, inter alia, alleged that this Court's ruling was based upon collusion with counsel for the Defendant which lead to a "cover-up" and ultimately fraud. The Court denied Plaintiff's motion.

The Plaintiff then proceeded to appeal this Court's ruling to the United States Court of Appeals for the Sixth Circuit. The Court of Appeals issued its Order affirming the ruling of this Court on July 22, 1991.[1]

All told, Plaintiff Hazra has raised precisely the same agruments on four separate occasions in two different courts.

Plaintiff now asks the Court to vacate its earlier judgment under Rules 60(b)(3) and (6) of the Federal Rules of Civil Procedure.

LAW AND ANALYSIS

Federal Rule of Civil Procedure 60(b) is applicable to the instant matter and provides, in pertinent part:

> On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; . . . (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

The Court entered its judgment on September 5, 1990. Therefore, his motion alleging fraud under Rule 60 (b)(3) is untimely.

Further, the Plaintiff offers no new evidence or fresh argument to suggest that he has a cause of action under Rule 60(b)(6) that would lead the Court to alter its earlier judgment.

---

[1]The Court of Appeals, on November 26, 1991, denied Hazra's Petition for Rehearing.

Accordingly, Plaintiff Jogananda Hazra's Motion to Vacate Judgment is hereby **DENIED**.

Defendant has requested that this Court award sanctions against the Plaintiff under its authority pursuant to Rule 11 of the Federal Rules of Civil Procedure.

Though the Court is generally hesitant and always cautious when considering the imposition of sanctions, particularly when the adverse party is proceeding pro se, any lesser action would be inappropriate in the instant matter.

The Court has little doubt that the Plaintiff believes that he has been wronged. However, as each of the previous ruling of this Court and the Sixth Circuit have stated, there is simply no evidence to support his claims. Simply because the Plaintiff believes something does not make it so.

This Court has allowed the Plaintiff to proceed in this utterly frivolous and unconscionable litigation far too long at a significant costs to the Defendants and the Courts. Plaintiff's Motion to Vacate Judgment has further unnecessarily and wastefully prolonged this litigation.

For the reasons as set forth above, the Court hereby **ORDERS** that Plaintiff Jogananda Hazra be **SANCTIONED** in the amount of **$2,173.75**. Said sum is based upon the expenses incurred by the Defendant in defending against Plaintiff's latest frivolous pleading.[2]

CONCLUSION

Plaintiff's Motion to Vacate Judgment is hereby **DENIED**.

Defendant's Motion for Sanctions is hereby **GRANTED**. Plaintiff is hereby **SANCTIONED** in the amount of **$2,173.75**.

IT IS SO ORDERED.

s/s

GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT

[2]Plaintiff is hereby forewarned that, absent additional or new evidence, that any further pleadings or appeal in the instant matter shall be deemed frivolous and the Plaintiff will be subject to further sanctions.

No. 91-3201

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Filed November 26, 1991
Leonard Green, Clerk

JOGANANDA HAZRA,	)	
Plaintiff-Appellant,	)	
v.	)	ORDER
NATIONAL Rx SERVICES, INC.,	)	
Defendant-Appellee.	)	
	)	

BEFORE: MERRITT, Chief Judge; KEITH, Circuit Judge; and CELEBREZZE, Senior Circuit Judge.

The appellant has petitioned the court to rehear its decision of July 22, 1991, affirming the judgment of the district court. Appellee has moved for an award of costs and attorney fees.

The court has considered the petition for rehearing and finds no issue of law or fact that was overlooked or misapprehended.

Furthermore, the court finds that the appellee is entitled to its costs of $1,380.25 under Fed. R. App. P. 39. The court finds that this is not a proper case for an award of attorney fees.

It is therefore **ORDERED** that the petition for rehearing is denied, the motion for costs is granted in the amount of $1,380.25, and the motion for attorney fees is denied.

ENTERED BY ORDER OF THE COURT

s/s
Clerk

APPENDIX D